

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JOHN MATZE,

Plaintiff,

v.

PARLEMENT TECHNOLOGIES, INC.  
(FKA PARLER, LLC);  
NDMASCENDANT, LLC;  
JEFFREY WERNICK; MARK  
MECKLER; DAN BONGINO;  
REBEKAH MERCER; DOES I-X, and  
ROE CORPORATIONS XI-XX,

Defendants.

AND ALL RELATED CLAIMS

Case No. 2:24-cv-00826-ART-NJK

ORDER

(ECF Nos. 11, 20, 44, 68)

More than three years ago, Plaintiff John Matze sued Defendant Parlement Technologies (then known as Parler LLC and referred to in this order as “Parler”) and several co-Defendants in Nevada state court for removing Matze as Parler’s CEO and conspiring to divest him of ownership in the company. (See ECF No. 1.) Parler later reincorporated in Delaware, transferred its headquarters to Tennessee, declared bankruptcy in Delaware, removed the Nevada suit to this Court, and sought transfer to Delaware to be consolidated with the bankruptcy proceeding.

On January 16, 2025, the Court heard oral argument for Parler’s motion to transfer venue to Delaware (ECF No. 11) and Matze’s countermotion to remand to state court (ECF No. 20). The Court provides this abbreviated written order to supplement the bench order issued at the hearing on January 16.

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1           **I.       Jurisdiction**

2           The Court finds that bankruptcy jurisdiction exists for this removed case,  
3 but diversity jurisdiction does not.

4           Federal subject-matter jurisdiction exists for cases removed from state  
5 court that are related to a bankruptcy proceeding. 28 U.S.C. §§ 1334, 1452(a).  
6 Subject-matter jurisdiction exists in this case because Matze’s claims relate to  
7 Parler’s bankruptcy.

8           Federal subject-matter jurisdiction based on diversity requires that no  
9 plaintiff and no defendant be from the same state. *See* 28 U.S.C. §§ 1332(a),  
10 1447(b). A case may be removed based on an amended pleading that establishes  
11 diversity jurisdiction, but not if the case was filed more than one year before the  
12 amended pleading, unless the plaintiff acted in bad faith to prevent removal. 28  
13 U.S.C. §§ 1446(b)(3), (c)(1). Generally, “a suit which, at the time of filing, could  
14 not have been brought in federal court must remain in state court unless a  
15 voluntary act of the plaintiff brings about a change that renders the case  
16 removable.” *People of State of Cal. By & Through Lungren v. Keating*, 986 F.2d  
17 346, 348 (9th Cir. 1993); *see Self v. Gen. Motors Corp.*, 588 F.2d 655, 659 (9th  
18 Cir. 1978).

19           When this case was filed in Nevada in March 2022, no diversity jurisdiction  
20 existed because both Matze and Parler were citizens of Nevada. Parler then moved  
21 its headquarters to Tennessee and reincorporated in Delaware. More than a year  
22 after moving and reincorporating, Parler removed this case to this Court based  
23 on bankruptcy and diversity jurisdiction. (*See* ECF No. 1.) Matze objected in a  
24 timely manner, arguing that Parler may not remove more than one year after the  
25 suit began and that Parler may not allege diversity jurisdiction based on its own  
26 voluntary actions that create diversity. This Court agrees on both points. Parler’s  
27 voluntary actions to reincorporate and establish headquarters outside Nevada  
28 fail to establish diversity, and, even if they did, they occurred more than one year

1 before removal. Accordingly, the Court finds that diversity jurisdiction is not a  
2 basis for removal in this case.

### 3 **II. Mandatory Abstention**

4 Mandatory abstention under 28 USC § 1334(c)(2) applies only when claims  
5 from state court are not core to a bankruptcy proceeding. Core proceedings in  
6 bankruptcy include the “allowance or disallowance of claims against the estate.”  
7 28 USC § 157(b)(2). This core proceeding is initiated by “filing a claim against a  
8 bankruptcy estate.” *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990). Matze filed a  
9 claim against the bankruptcy estate in August 2024. Matze argues that  
10 mandatory abstention must be decided based on the status of claims at the time  
11 of removal, and that since he had not filed a proof of claim against Parler’s  
12 bankruptcy estate at the time of removal, mandatory abstention applies. Parler  
13 argues that the Court can consider the fact that Matze’s claim is now core and  
14 indeed the largest single claim asserted in the bankruptcy proceeding to find that  
15 mandatory abstention does not apply. (See ECF No. 44-1). Because the Court  
16 finds that permissive abstention is appropriate, it need not resolve this issue.

### 17 **III. Permissive Abstention/Equitable Remand**

18 This Court may remand or permissively abstain from a state court case  
19 removed through bankruptcy jurisdiction on any equitable ground.  
20 28 USC § 1452(b); 28 USC § 1334(c)(1); see *Things Remembered, Inc. v. Petrarca*,  
21 516 U.S. 124, 131 (1995) (Ginsburg, J., concurring). Equitable grounds include  
22 the following fourteen factors. *In re Cedar Funding, Inc.*, 419 B.R. 807, 821 (B.A.P.  
23 9th Cir. 2009):

- 24 1. the effect or lack thereof on the efficient administration of the estate if the  
25 Court recommends [remand or] abstention;
- 26 2. extent to which state law issues predominate over bankruptcy issues;
- 27 3. difficult or unsettled nature of applicable law;
- 28 4. presence of related proceeding commenced in state court or other

- 1 nonbankruptcy proceeding;
- 2 5. jurisdictional basis, if any, other than § 1334;
- 3 6. degree of relatedness or remoteness of proceeding to main bankruptcy case;
- 4 7. the substance rather than the form of an asserted core proceeding;
- 5 8. the feasibility of severing state law claims from core bankruptcy matters to
- 6 allow judgments to be entered in state court with enforcement left to the
- 7 bankruptcy court;
- 8 9. the burden on the bankruptcy court's docket;
- 9 10. the likelihood that the commencement of the proceeding in bankruptcy
- 10 court involves forum shopping by one of the parties;
- 11 11. the existence of a right to a jury trial;
- 12 12. the presence in the proceeding of nondebtor parties;
- 13 13. comity; and
- 14 14. the possibility of prejudice to other parties in the action.

15 Several factors that weigh in favor of abstention relate to the fact that this  
16 case involves purely state law claims and was pending in state court for more  
17 than three years before removal. Nevada law supplies every cause of action in  
18 Plaintiff's complaint, and Nevada courts oversaw three years of motion practice  
19 in this case, including an appeal to the Nevada Supreme Court. (See ECF No. 2.)  
20 Factors two (extent to which state law issues predominate over bankruptcy  
21 issues), four (presence of related proceeding commenced in state court), and  
22 thirteen (comity) consequently favor abstention.

23 Additionally, several factors that weigh in favor of abstention relate to the  
24 justice system's interest in seeing cases resolved on the merits. Parler's co-  
25 defendants rigorously contested personal jurisdiction and other preliminary  
26 matters in state court. (See ECF No. 2.) Parler declared bankruptcy and removed  
27 this case to federal court minutes before it was to receive a litigation sanction.  
28 (See ECF No. 19.) Matze argues that he is entitled to a jury trial against Parler's

1 co-defendants, and Defendants may raise additional procedural obstacles that  
2 will delay resolution on the merits if the case is transferred to Delaware.  
3 Accordingly, factors ten (the likelihood that the commencement of the proceeding  
4 in bankruptcy court involves forum shopping by one of the parties), eleven (the  
5 existence of a right to a jury trial), twelve (the presence in the proceeding of  
6 nondebtor parties), and fourteen (the possibility of prejudice to other parties in  
7 the action) favor abstention.

#### 8 **IV. Conclusion**

9 As stated at the hearing, the Court GRANTS Parler's motion for leave to file  
10 notice of Matze's claim in Delaware Bankruptcy Court (ECF No. 44).

11 For the reasons stated, the Court GRANTS Matze's motion to remand the  
12 case to Nevada's Eighth Judicial District Court (ECF No. 20).

13 The Court DENIES Matze's motion for attorneys' fees (ECF Nos. 19, 20), as  
14 it was not objectively unreasonable for Parler to remove this case. *See Martin v.*  
15 *Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005).


16 Additionally, the Court finds Parler's motion to transfer venue, (ECF No.  
17 11), moot, as this Court is without jurisdiction to consider the motion.

18 Additionally, the Court dismisses without prejudice NDMAscent's motion  
19 to amend its counterclaim (ECF No. 62).

20 Additionally, the Court grants Matze's motion made in court to strike ECF  
21 No. 69 from the record and denies as moot Matze's motion to seal (ECF No. 68).

22 Finally, the Court instructs the Clerk to close the case and provide notice  
23 to Nevada's Eighth Judicial District Court of the remand (ECF No. 20).

24 DATED THIS 21st day of January, 2025.

25  
26   
27 ANNE R. TRAUM  
28 UNITED STATES DISTRICT JUDGE